

DATED 6 November 2024

## Deed of Variation

under section 106 and section  
106A Town and Country Planning  
Act 1990 relating to Land north of  
Gatewen Road New Broughton  
Wrexham LL1 6YA

- (1) Wrexham County Borough Council
- (2) Bellway Homes Limited

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This **Agreement** is made on

6 November

2024

**Between:**

- 1 **Wrexham County Borough Council** of Guildhall Wrexham LL11 1AY (the **Council**); and
- 2 **Bellway Homes Limited** (Company Registration No. 670176) whose registered office address is at Woosington House Woosington Newcastle Upon Tyne NE13 8BF (the **Owner**).

**Whereas:**

- (A) By virtue of the Act the Council is the Local Planning Authority for the purposes of this Agreement for the area in which the Site is situated and is the Local Planning Authority by whom the planning obligations hereby created are enforceable.
- (B) The Owner is the registered freehold proprietor with absolute title of the Site registered at HM Land Registry under Title Number WA857583.
- (C) On 25 February 2021 the Planning Permission was granted pursuant to the Appeal. In support of the Appeal Glyndwr University made the Unilateral Undertaking to the Council on 5 February 2021.
- (D) The Owner and the Council have agreed to allow the disposal of the Affordable Housing Units as Discounted Sale Affordable Housing and have therefore agreed to enter into this Agreement to vary the Unilateral Undertaking to provide for this.
- (E) The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants, agreements, conditions and stipulations hereinafter contained.

It is agreed as follows:

1 **Definitions and Interpretation**

- 1.1 In this Agreement the following expressions shall have the following meanings:

**Unilateral Undertaking:** the unilateral undertaking made pursuant to Section 106 of the Act by Glyndwr University to the Council dated 5 February 2021.

2 **Operative Provisions**

- 2.1 This Agreement is made pursuant to sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of Localism Act 2011 and any other enabling powers and creates planning obligations for the purposes of section 106 of the Act enforceable by the Council as Local Planning Authority.
- 2.2 All words and phrases defined in the Unilateral Undertaking shall have the same meaning in this Agreement save where varied by this Agreement.
- 2.3 In all other respects the Unilateral Undertaking as varied by this Agreement shall remain in full force and effect.
- 2.4 Where the context requires references in the Unilateral Undertaking to "Undertaking" shall be construed as the Unilateral Undertaking as amended by this Agreement.
- 2.5 This Agreement shall take effect on the date hereof.
- 2.6 The Council acknowledges and agrees to be bound by the Unilateral Undertaking.

### 3 PLANNING OBLIGATIONS AND VARIATION OF UNILATERAL UNDERTAKING

3.1 The Council and the Owner agree to vary the Unilateral Undertaking as follows:

3.1.1 The following definitions shall be inserted in Clause 1 of the Unilateral Undertaking:

**Discounted Sale Affordable Housing** : those Affordable Housing Units which shall be sold to buyers at the Discounted Price

**Discounted Sale Affordable Housing Disposal**: a freehold disposal by the Owner of a Discounted Sale Affordable Housing Unit to a Discounted Sale Affordable Housing Owner

**Discounted Sale Affordable Housing Owner**: the owner of the freehold of a Discounted Sale Affordable Housing Unit

**Discounted Sale Affordable Housing Unit**: an Affordable Housing Unit sold as Discounted Sale Affordable Housing and Discounted Sale Affordable Housing Units shall be construed accordingly

**Discounted Price**: means a 30% discount on the Market Value of the Discounted Sale Affordable Housing Unit (or as otherwise agreed in writing with the Council) such that the Discounted Sale Affordable Housing shall not be disposed of at more than 70% of the Market Value

**Discounted Sale Affordable Housing Contribution**: means 30% of the Market Value of the Discounted Sale Affordable Housing Unit(s);

3.1.2 The following definition at Clause 1 of the Unilateral Undertaking shall be deleted and replaced with:

**Affordable Housing**: means subsidised housing which will be available to Eligible Persons including (without limitation) Intermediate Rented Housing, Shared Equity Housing, Shared Ownership Housing, Social Rented Housing and Discounted Sale Affordable Housing and which shall comprise 25% of the Dwellings to be built on Site (rounded to the nearest whole number)

3.1.3 The following definitions at Clause 1 of the Unilateral Undertaking shall be deleted:

**Discounted Sale Housing** means Affordable Housing Units sold or available for sale by way of a Discounted Housing Lease and "Discounted Sale Housing Unit" shall refer to any single Dwelling provided as such

**Discounted Housing Disposal** means a lease for a term of not less than 125 years or a freehold disposal of an Affordable Housing Unit to an Eligible Person for a premium or consideration equal to but not more than the Discounted Value on terms that include those set out in Part 6 of the Fourth Schedule

**Discounted Housing Lease** means a lease for a term not less than 125 years of a Discounted Sale Housing Unit granted by the Registered Social Landlord to an Eligible Person at a premium equal to or not more than the Discounted Value on terms which include those set out in Part 3 of the Fourth Schedule

**Discounted Value** means 70% of the Market Value

**DHD Housing** means Affordable Housing Units sold or available for sale by way of a Discounted Housing Disposal and "DHD Unit" shall refer to any single Dwelling provided as such

**DHD Owner** means the owner of the freehold or leasehold of a DHD Unit

**DHD Transfer** means a lease or TP1 transfer effecting a Discounted Housing Disposal

**RSL** a registered social landlord as defined in Part 1 of the Housing Act 1996

**Unrestricted Housing Unit** means those dwelling units to be erected in the Development which are not to be Affordable Housing Units and "Unrestricted Housing" shall be construed accordingly.

- 3.1.4 Clauses 7.9, 7.11 and 7.12 of the Unilateral Undertaking shall be deleted and replaced with:

7.9 Subject to Clause 7.12 the provisions of the Unilateral Undertaking shall not be enforceable against owner-occupiers or tenants or lessees of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them or their mortgagee or chargee.

7.11 The provisions of the Fourth Schedule (except for paragraph 5 of Part 5, paragraph 5 of Part 6 and paragraph 5 of Part 9 thereof) shall not be binding on a mortgagee in possession of an Affordable Housing Unit or a bona fide purchaser for value from such a mortgagee in possession or any receiver (or administrative receiver) appointed by such mortgagee (except a purchaser which is an RSL) PROVIDED THAT:

A) such mortgagee or receiver shall first have used reasonable endeavours over a period of three months in consultation with the Council's Head of Housing and Public Protection Office to dispose of the Affordable Housing to an RSL or otherwise in accordance with the Fourth Schedule; and

B) such mortgagee or receiver shall have provided such evidence to the Council of such reasonable endeavours.

7.12 The provisions of the Fourth Schedule (except for paragraph 5 of Part 5, paragraph 5 of Part 6 and paragraph 5 of Part 9 thereof) shall not be binding on either:

a) any successors in title to the Owner as owners or occupiers of the Market Housing Units on the Site and any mortgagee or chargee (or receiver or administrative receiver) appointed and their successor in title;

b) any leaseholder of a Shared Ownership Unit who has Staircased out to 100% or their mortgagee or chargee (or receiver or administrative receiver) or successor in title; or

c) any occupier of any other Affordable Housing Unit who has acquired 100% of the relevant Affordable Housing Unit under a statutory right to buy or acquire and their mortgagees and successors in title

- 3.1.5 Paragraphs 2, 5, 6, 8 and 10 of Part 1 General Obligations of the Fourth Schedule shall be deleted and replaced with:

2. Not to dispose of the Affordable Housing Units other than to an RSL by way of an Affordable Housing Disposal or to an Eligible Person by way of a Shared Ownership Disposal or a Shared Equity Disposal or a Discounted Sale Affordable Housing Disposal (as set out in paragraph 1 of Parts 2, 3, 4, 5, 6 and 9 hereof) Provided That the Council and the owners of the Affordable Housing Units may by agreement prescribe terms for the disposal of different types of Affordable Housing not detailed in this Undertaking (both parties acting reasonably and without delay in agreeing

such terms) Provided That such agreement is legally secured by way of a supplemental agreement made under section 106 of the Act.

5. Following receipt of the decision letter confirming the grant of the Planning Permission and prior to the commencement of a Material Operation to approach an RSL and to pursue negotiations with all due diligence in order to comply with the obligations contained in this Undertaking and to offer the Affordable Housing Units (other than those designated as Shared Equity Units and Discounted Sale Affordable Housing Units) for sale to an RSL on terms that have due regard to the restrictions affecting such Affordable Housing Units contained in this Undertaking.

6. Following a written request from the Council, to provide to the Council such information concerning the progress of negotiations for Affordable Housing Disposals with an RSL or Shared Equity Disposals or Discounted Sale Affordable Housing Disposals to Eligible Persons (as appropriate) as shall reasonably be required by the Council.

8. Not to use the Affordable Housing Units for any purpose other than for the provision of Social Rented Housing, Shared Ownership Housing, Shared Equity Housing, Discounted Sale Affordable Housing and Intermediate Rented Housing (subject to the proviso set out in paragraph 2 of this Part) and to respond to any request from the Council for information as to the tenure of each Affordable Housing Unit within ten Working Days of receipt such request to be made on no more frequent a basis than once every six months.

10. Not to allow the Occupation of more than 50% (fifty percent) of the Market Housing Units within any Dwelling Phase until the Affordable Housing Units within that Dwelling Phase have been constructed, are ready for Occupation and have been disposed of (or evidence has been provided to the Council that the Owner is actively marketing and has used reasonable endeavours to procure such disposals) by way of an Affordable Housing Disposal to an RSL and/or a Shared Equity Disposal and/or a Discounted Sale Affordable Housing Disposal to Eligible Persons.

3.1.6 A new "Part 9 – Discounted Sale Affordable Housing" shall be inserted in the Fourth Schedule of the Unilateral Undertaking as follows:

#### **Part 9 – Discounted Sale Affordable Housing**

1. Not to dispose of any Affordable Housing Unit which is provided as Discounted Sale Affordable Housing other than by way of a Discounted Sale Affordable Housing Disposal to an Eligible Person.
2. Not to dispose of a Discounted Sale Affordable Housing Unit to an Eligible Person for a price that exceeds the Discounted Price.
3. To procure that each Discounted Sale Affordable Housing Disposal shall incorporate a restriction whereby a Discounted Sale Affordable Housing Owner who wishes to dispose of their interest in the Discounted Sale Affordable Housing Unit shall be prevented from disposing of their interest in the Discounted Sale Affordable Housing Unit other than to an Eligible Person at no more than the Discounted Price but subject always to Paragraph 8 of this Part 9.
4. In the event that the Discounted Sale Affordable Housing Unit is sold by a mortgagee in possession without the provisions of this Undertaking being binding upon it (pursuant to clause 7.11), the mortgagee shall, in so far as it is able to from the proceeds of sale of the Discounted Sale Affordable Housing Unit and in any event only after deduction of any monies owing to the mortgagee pursuant to a charge over the Discounted Sale Affordable Housing Unit, pay to

the Council or Nominated RSL (as appropriate), the Discounted Sale Affordable Housing Contribution within one week of completion of the sale of the Discounted Sale Affordable Housing Unit and provide the Council's Head of Housing and Public Protection (or such other officer undertaking the duties of a chief housing officer) with an account of the amount due pursuant to this paragraph.

5. The Owner or a Discounted Sale Affordable Housing Owner wishing to dispose of their interest in a Discounted Sale Affordable Housing Unit shall comply with any reasonable procedure adopted by the Council from time to time for arranging and administering the disposal to Eligible Persons of interests in Discounted Sale Affordable Housing Units.
6. In the case of initial sales only by the Owner of Discounted Sale Affordable Housing Units where the Discounted Sale Affordable Housing Unit has been actively marketed for sale for a period of six months and either:
  - a. no Eligible Person has exchanged unconditional contracts for the Discounted Sale Affordable Housing Unit within that period; or
  - b. an Eligible Person has been identified as a potential purchaser of the Discounted Sale Affordable Housing Unit within the six month period but legal completion of the Discounted Sale Affordable Housing Unit has not occurred within a further period of twenty weeks of the Eligible Person being identified;

then the Discounted Sale Affordable Housing Unit may be sold in the open market at Market Value free from the affordable housing restrictions contained in the Fourth Schedule of this Undertaking Provided That within two working days of legal completion of such sale, the Discounted Sale Affordable Housing Contribution is paid to the Council by the Owner to be used for the provision of Affordable Housing within the Wrexham County Borough Council administrative area within five years of receipt.

7. In the event of subsequent sales of a Discounted Sale Affordable Housing Unit the Discounted Sale Affordable Housing Owner shall not dispose of the Discounted Sale Affordable Housing Unit without first having notified the Council and/or its Nominated RSL (as appropriate) in writing of their intention to dispose of the Discounted Sale Affordable Housing Unit.
8. Where a Discounted Sale Affordable Housing Owner wishes to dispose of their interest in a Discounted Sale Affordable Housing Unit and such Discounted Sale Affordable Housing Unit has been actively marketed for sale for a period of twenty weeks and either:
  - a. no Eligible Person has exchanged unconditional contracts for the purchase of the said unit within that period; or
  - b. an Eligible Person has been identified as a potential purchaser of the Discounted Sale Affordable Housing Unit within the said twenty week period but no unconditional contract has been entered into within twenty weeks of that Eligible Person being identified,

then subject to the Discounted Sale Affordable Housing Owner complying with paragraphs 8i-7iii inclusive below the Discounted Sale Affordable Housing Owner shall be free to dispose of the Discounted Sale Affordable Housing Unit free from the affordable housing restrictions contained in this Undertaking;

- i. the price at which the Discounted Sale Affordable Housing Unit has been offered for sale to Eligible Persons is no greater than the Discounted Price ascertained by agreement between the Owner or Discounted Sale Affordable Housing Owner (as the case may be), any mortgagee of the Discounted Sale Affordable Housing Owner, and the Nominated RSL (if any) or failing agreement at the expense of the Owner or the Discounted Sale Affordable Housing Owner by an independent qualified valuer appointed by agreement between the relevant parties or failing agreement by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors on the application of any party and the decision of such valuer shall be final;
  - ii. the Discounted Sale Affordable Housing Owner has reasonably demonstrated to the Council that it has acted in good faith in considering any offers from Eligible Persons; and
  - iii. such Discounted Sale Affordable Housing Unit has also been offered for sale to the Nominated RSL, any other RSL nominated by the Council or the Council and no unconditional contract to buy such unit has been entered into within that period.
- 9. In the event that the Discounted Sale Affordable Housing Unit is sold on the open market pursuant to paragraph 8, the Discounted Sale Affordable Housing Owner shall pay the Discounted Sale Affordable Housing Contribution to the Council or the Nominated RSL (as appropriate) within two days of legal completion Provided That such funds received by the Council or the Nominated RSL (as appropriate) shall be used for the provision of Affordable Housing within the Wrexham County Borough Council administrative area as agreed between the Council and the Nominated RSL within five years of receipt.
- 10. Following receipt of the Discounted Sale Affordable Housing Contribution by the Council or Nominated RSL (as appropriate) pursuant to Paragraph 8 of Part 9 Fourth Schedule the Discounted Sale Affordable Housing Owner (as appropriate) shall apply to HM Land Registry to remove the restriction set out at Paragraph 3 of Part 9 Fourth Schedule.
- 11. The Council covenants with the Owner to repay all or part of the Discounted Sale Affordable Housing Contribution payable by the Owner to the Council pursuant to paragraphs 6 and 9 of Part 9 of the Fourth Schedule which has not been expended or committed for expenditure to the person or persons who actually paid the said contribution, together with all interest accrued thereon, within twenty working days of a request for repayment by the Owner.

#### **4 Miscellaneous**

- 4.1 The obligations hereby created shall be registered as a Local Land Charge.
- 4.2 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

#### **5 Third Parties**

No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this clause shall not affect any

right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

**6 Waiver**

No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants, terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**7 Legal Costs**

The Owner shall pay to the Council its reasonable legal fees prior to completion of this Agreement.

**8 VAT**

All consideration given in accordance with the terms of this Agreement all be exclusive of any Value Added Tax properly payable.

**9 Jurisdiction**

This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

**10 Delivery**

The provisions of this Agreement (other than this Clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

**In witness** whereof the parties hereto have executed this Agreement the day and year first before written.

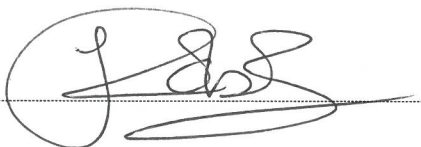
Executed as a deed (but not delivered until dated) by affixing the Common Seal of **Wrexham County Borough Council** in the presence of:

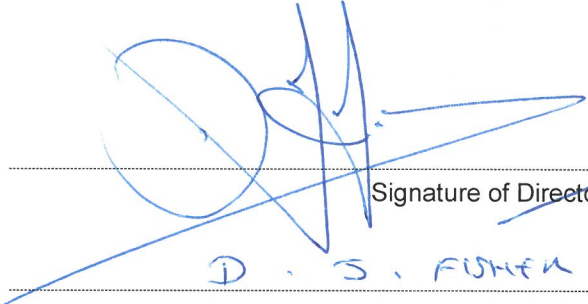


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Executed as a deed (but not delivered until dated) by **Bellway Homes Limited** acting by a director in the presence of:

*an attorney*  
↓

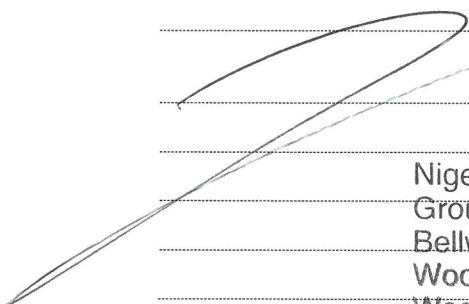
  
Signature  
LINDA ROBERTS  
Print name

  
Signature of Director *Attorney*  
D. S. FISHER  
Print name

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

  
Nigel Clasby  
Group Head of Legal  
Bellway Homes Limited  
Woolsington House  
Woolsington  
Newcastle upon Tyne  
NE19 8PF